

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

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CLAIMANT: Northwestern Corporation

CASE 40A-0338-R-2022
40A 94434-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 40A 94434-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claim received an issue remark. Issue remarks result from Department of Natural Resources and Conservation ("DNRC") claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. If claims examination cannot

confirm some aspect of a claim, an issue remark is added to the claim. The claim did not receive any objections or notices of intent to appear.

The Court consolidated this claim into Water Court Case 40A-0338-R-2022 on May 12, 2022. The consolidation order set a filing deadline by which Claimant was to file information resolving the issue remark. The Court did not receive a response, so another deadline was set. The Court again did not receive a response.

FINDINGS OF FACT

1. Claim 40A 94434-00 appeared with the following issue remark:

THE POINT OF DIVERSION COULD NOT BE REFINED FROM
INFORMATION IN THE CLAIM FILE.

2. Attached to the Statement of Claim form filed April 22, 1982 is a Declaration of Vested Groundwater Rights form. On this form, an “X” is marked in what appears to be the SENESE of Section 22, T8N, R15E. The point of diversion is currently described as NESE of Section 22, T8N, R15E.

3. Claimant did not supply any additional information regarding the point of diversion of this claim.

4. The point of diversion should be described as SENESE of Section 22, T8N, R15E.

5. The issue remark should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the

claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

CONCLUSIONS OF LAW

1. The change described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record and the proposed change provides the Court with a sufficient basis to resolve and remove the issue remark from the above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Northwestern Corporation
11 E Park St
Butte, MT 59701

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 94434-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: NORTHWESTERN CORPORATION
11 E PARK ST
BUTTE, MT 59701

Priority Date: JANUARY 1, 1916

Type of Historical Right: FILED

Purpose (use): INDUSTRIAL

Flow Rate: 8.57 GPM

Volume: 6.93 AC-FT

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SENESE	22	8N	15E	WHEATLAND

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESE	22	8N	15E	WHEATLAND